Before deciding on the question of whether the confirmation letters constitute an admission by the appellants and the weight to be given to such admission, I am perturbed by the fact that the admission pertaining to the deposit is one which is inextricably intertwined with the issues at the trial, ie whether the appellants are entitled to forfeit the deposit which in turn will resolve around a finding of fact by the trial judge as to whether the oral representations as alleged by the respondents were in fact made by the appellants. If judgment on admissions is given, then it follows that the basis of the trial of this issue will be extinguished. Furthermore, it would be an anomalous situation if the respondents should be given judgment on the admissions purportedly expressed or implied from the confirmation letters if the trial judge subsequently, as a finding of act, holds that no oral representations were made by the appellants and that the respondents' purported rescission was wrongful and amounted to a repudiation of the agreement to lease and flowing therefrom the appellants were entitled to forfeit the deposit.

Accordingly, I am of the view that an application under O 27 r 3 should not have been taken out by the respondents under such circumstances, and I will allow this appeal and make the following orders, namely:

(a) the appeal is allowed but the allowing of the appeal does not constitute res judicata; and the liability or otherwise of the appellants/defendants to the respondents/plaintiffs for the sum of $15,375.40 be determined afresh at the hearing of the action and the district judge hearing the trial is not to have any regard to what had previously transpired on the O 27 r 3 application and the proceedings consequent to that;
(b) order for costs of application for leave to appeal to stand;
(c) order for costs on the O 27 application and the appeal therefrom be reserved to the trial judge hearing the action;
(d) the respondents/plaintiffs to deposit with their solicitors the sum of $15,375.40 and to abide by the result of the action; and
(e) no order as to costs of this appeal.

Order accordingly.

Solicitors: *Shook Lin & Bok; Chor Pee & Co.*

Reported by *Terence Tan Bian Chye*

Cold Storage Singapore (1983) Pte Ltd v Management Corporation of Chancery Court & Ors

HIGH COURT (SINGAPORE) - ORIGINATING SUMMONS NO 348 OF 1989
CHAN SEK KEONG J
5 AUGUST 1989

Landlord and Tenant - Lease of premises for business - Imposition of parking scheme by assignee of landlord - Scheme affecting business of tenant - Whether derogation from grant

Land Law - Management corporation - Duty to manage housing estate - Whether parking scheme within its powers - Special resolution defeated - Insufficient notice for resolution - Whether resolution took effect as ordinary resolution - HUDC Housing Estates Act (Cap 131, 1985 Ed), ss 2, 13(1) & 45

Chancery Court ('the estate') is a housing estate which has a number of shopping units within it. The estate was originally developed by the Housing and Urban Development Corporation ('HUDC'). The plaintiffs are a monthly tenant of the Housing Development Board ('HDB'). Under the terms of the tenancy, the plaintiffs agreed to use the premises rented ('the premises') as a supermarket and for no other purpose. The HUDC Act ('the Act') was enacted to establish bodies corporate comprising owners of flats on HUDC estates to take over the management and maintenance of these estates from the HUDC. For this purpose, the first defendant was constituted to manage the estate. The second to the thirteenth defendants are the current members of the management committee of the first defendant. On 19 April 1987, the first defendant held an extraordinary general meeting at which the members passed a resolution to introduce a pay parking scheme within the estate. The scheme sought to regulate vehicular traffic flow, to prevent unauthorized parking and to reduce surface wear and tear of the roads. The scheme required all non-resident motorists to pay $1 if they wished to enter or park in the estate.

Following the passing of the resolution, the plaintiffs became concerned about the effect of the scheme on its business. Proposals were made by the plaintiffs to the first defendant, which involved the plaintiffs helping to regulate traffic flow in return for the scrapping of the scheme, and these were accepted. An agreement embodying the proposals ('the agreement') was then entered into between the first defendant and the plaintiffs. Later, the first defendant held an extraordinary meeting to implement the scheme. The chairman of the meeting ruled that the resolution to implement the scheme was a special one. A vote was taken but as more than 10% of the members voted against the resolution, it was declared lost. Following the expiry of the agreement, the management committee put the scheme into immediate effect. The plaintiffs started the action against the defendants for a declaration that the first defendant was acting outside its powers in imposing the scheme, or that the scheme amounted to a private nuisance, or that it was an unlawful interference with the plaintiffs' trade and the first defendant's action caused the HDB to breach its tenancy agreement with the plaintiffs. A declaration was also sought against the second to thirteenth defendants on similar grounds. The plaintiffs sought an injunction to restrain the defendants from interfering with any person entering the estate, and an order for the defendants to pay damages caused by the imposition of the scheme. On the same day that the writ of the plaintiffs was issued, they obtained an interim injunction against the defendants in the terms of the permanent injunction sought.

The case was heard later tried. The plaintiffs argued that the first defendant did not have authority to implement the scheme as a special resolution which moved that the scheme be implemented immediately was defeated. The first defendant argued that the resolution could not have been tabled as a special resolution as insufficient notice as required by s 2 of the Act had been given. It was submitted that the resolution was valid as an ordinary resolution as 56 out of 76 votes were for the motion, or alternatively, that it did not take effect at all.

Held, discharging the interim injunction and refusing the plaintiffs' claims:

(1) The plaintiffs' claims of derogation, no quiet enjoyment and nuisance all have a common thread running through them, that is some interest or right of the plaintiffs had been infringed by the action of the defendants. The plaintiffs therefore had to show that they had some right or interest which had been infringed.

(2) A grantor may not derogate from his grant in that the grantor of land that is to be used for a particular purpose is under an obligation to abstain from doing anything on the adjoining property belonging to him which would prevent the land granted from being used for the purpose for which the grant was made.

(3) This principle is applicable even where there is no physical interference with the enjoyment of the demised land, but the interference must be substantial.

(4) The crux of the issue is whether the operation of the scheme is a substantial interference with the rights of the plaintiffs.

(5) Under the scheme, the plaintiffs' customers are not barred or prevented or hindered from shopping at the plaintiffs' supermarket. The entry charge imposed had the effect of deterring shoppers from shopping at the plaintiffs' supermarket.

(6) The scheme was undoubtedly reasonable and the levy was also reasonable. The issue was whether the plaintiffs by having nothing more than the status of a tenant operating a supermarket are entitled to claim for their existing and prospective customers an absolute right to drive their cars and park them in the estate for free.

(7) The plaintiffs' claim was not sustainable. It was much too extensive a right to be implied by law in favour of the plaintiffs for the purpose of operating their supermarket as it is neither reasonable nor necessary for such a business. If the court were to imply such a right, it would in effect be rewriting the terms of the tenancy agreement in favour of the plaintiffs.

(8) All that the scheme would do would be to make it more expensive or less profitable for the plaintiffs to operate the supermarket, but case law had decided that that does not amount to a derogation from a grant.

(9) The plaintiffs' allegation that the first defendant had acted ultra vires its powers in implementing the scheme is an academic issue, as the court would not grant relief to any party who had no rights to enforce. However, this issue is important to all management corporations established under the Act. On this issue, the court was of the view that the first defendant not only had the power to manage the estate, it was under a duty to do so. The regulation of the use of the roads and the car parks came within the first defendant's power of management. The adoption of the scheme was effected at a general meeting of the lessees of the flats, who were owners as tenants in common of the roads. They therefore had the authority to implement the scheme.

(10) The interim injunction was thus set aside and the action was dismissed with costs. There would be an inquiry as to damages suffered by the first defendant arising out of the injunction and an order that the same be paid to the first defendant by the plaintiffs.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 84 of 1989.]

Cases referred to

1 *Aldin* v *Latimer Clark, Muirhead & Co* [1894] 2 Ch 437 (folld)
2 *Harmer* v *Jumbil (Nigeria) Tin Areas Ltd* [1921] 1 Ch 200 (folld)
3 *O'Cedar Ltd* v *Slough Trading Co Ltd* [1927] 2 KB 123 (folld)

Legislation referred to

HUDC Housing Estates Act (Cap 131, 1985 Ed) ss 2, 13(1), 45

K Shanmugam (*Ong Chee Kuan* with him) for the plaintiffs.
Ong Bock Kee for the first defendant.
Terry Ang for the second, third, fifth to thirteenth defendants.
Daniel Wee for the fourth defendant.

Cur Adv Vult

Chan Sek Keong J: On 12 April 1989, the plaintiffs commenced this action against the defendants for the following reliefs:

(1) A declaration that the first defendant has no power under the HUDC Housing Estates Act (Cap 131) ('the HUDC Act') to impose a levy on vehicles entering Chancery Court; alternatively, a declaration that the first defendant has acted unlawfully in imposing such a levy as such action amounts to private nuisance against the plaintiffs or, alternatively, unlawful interference with the plaintiffs' trade in that the first defendant's members did not approve the imposition of such levy and/or the first defendant's action caused the Housing & Development Board ('the HDB') to breach its tenancy agreement dated 7 October 1985 with the plaintiffs ('the HDB tenancy agreement').

(2) A declaration that the second to the thirteenth defendants as the management committee of the first defendant have no power under the HUDC Act either individually or collectively to impose the said levy; alternatively, a declaration that the said members of the management committee either individually or collectively have acted unlawfully in imposing the said levy as the action amounts to private nuisance against the plaintiffs and/or that the action is unlawful interference with the plaintiffs' trade in that the first defendant did not properly authorize the other defendants to impose the said levy and/or the said action caused the HDB to breach the HDB tenancy agreement.

(3) An injunction to restrain the first defendant and the other 12 defendants either individually or collectively as the management committee whether by itself or

themselves or through their officers, servants and/or agents or otherwise howsoever from imposing any levy on vehicles and/or persons coming or entering Chancery Court and/or otherwise interfering or preventing or otherwise howsoever hindering any vehicles and/or persons coming or entering into Chancery Court for the purposes of visiting and/or shopping with the plaintiffs during the operational hours of the plaintiffs from 8.45am to 9.15pm every day from Monday to Sunday.

(4) An order that the defendants do pay the plaintiffs such damages as were caused by the imposition of the levy on vehicles entering Chancery Court.

(5) For such further or other reliefs as shall be just.

On the same day the writ was issued, the plaintiffs obtained an interim injunction against the defendants in terms of the permanent injunction sought in this action.

The relevant facts are as follows. Chancery Court is a housing estate which also has a number of shopping units within it. The estate was originally developed by the Housing & Urban Development Corporation ('HUDC') on land belonging to the HDB. The residential units were sold to about 150 purchasers on 99-year leases. The plaintiffs are a monthly tenant of the HDB of the commercial unit known as Block 36H Dunearn Road #01-44 Singapore 1130. Under the terms of the tenancy agreement, the plaintiffs covenanted to use the premises as a supermarket ('the supermarket') and for no other purpose.

The HUDC Act was enacted in 1984 to establish bodies corporate comprising owners of flats in HUDC housing estates to take over the maintenance and management of these estates from the HDB. For this purpose, the first defendant was constituted as the body corporate comprising all the owners of the 'flats' (which expression is defined in the HUDC Act to include the commercial units) in Chancery Court. The Act also provides for the annual election of a management committee by the members of the management corporation to manage the estate. The second to the thirteenth defendants are the current members of the management committee.

Pursuant to s 45 of the HUDC Act, the HDB granted a lease of the common property (as defined in the HUDC Act) of Chancery Court to all the flat-owners as tenants in common in equal shares for a term of years concurrent with the unexpired terms of their leases.

The powers of the management corporation are set out in s 13 of the HUDC Act, the relevant portion of which reads:

(1) A body corporate shall ...
  (a) control, manage and administer the common property for the benefit of the owners of flats in that estate;
  (b) properly maintain and keep in a state of good and serviceable repair -
    (i) the common property; and
    (ii) any personal property vested in the body corporate;

On 19 April 1987, the first defendant held an extraordinary general meeting at which the members passed a resolution to introduce a pay parking scheme ('the scheme') within Chancery Court. The scheme sought to achieve the following objects: (1) to regulate vehicular traffic flow; (2) to prevent unauthorized parking; (3) to reduce surface wear and tear of the roads. It is not necessary to describe the details of the scheme. In essence, it required all non-resident motorists to pay $1 if they wished to enter or park in the estate. It was further agreed that the scheme be reviewed by the management corporation three to six months after its implementation.

Following the passing of the resolution, the plaintiffs became concerned about the effect of the scheme on its business. They approached the management committee and made the following proposals:

(1) To pay 56% (estimated usage by the plaintiffs' customers) of the cost of resurfacing the roads/driveway as and when the works are carried out.

(2) To pay for the cost of barriers and car park booth amounting to $4,380.

(3) To provide an attendant at the plaintiffs' cost to man the car park booth near Block 36E between 6.30am to 9am, Monday to Saturday (identified as peak time when non-resident motorists enter the estate to take short cuts), to lower the barrier near Block 36A between 9am to 12pm on Sunday (identified as time when parking from the church overspills to the estate).

The management committee accepted the plaintiffs' proposals subject to ratification by the members. The proposals were tabled at the second annual general meeting of the management corporation held on 31 October 1987. At this meeting, the outgoing management committee proposed that the scheme be deferred to enable a new scheme based on a survey of vehicular movements in Chancery Court be tested. The meeting agreed to the following line of action:

(a) The new management committee would negotiate with the plaintiffs for a three-month extension of the existing interim scheme with the additional feature providing for lowering of the barrier near Block 36A between 5pm and 7pm.

(b) Should the plaintiffs reject the proposal, the management committee would proceed with the new scheme stated above.

(c) The scheme would be deferred to test the effectiveness of the new measures.

The management committee accordingly negotiated with the plaintiffs as a result of which an agreement dated 1 April 1988 was signed between the plaintiffs and the first

defendant. Under this agreement, the plaintiffs agreed, inter alia, to provide attendants at their cost to man the car park booth at certain specified times, to pay 56% of the cost of resurfacing and maintenance of the roads within Chancery Court. The agreement was for a period of one year subject to termination by either party giving three months' notice in writing to the other party. On 28 October 1988, the first defendant held another extraordinary meeting to discuss, inter alia, the scheme. A resolution was moved to implement the scheme immediately. The chairman ruled that the resolution was a special resolution and it was put to the vote. The voting was 56 for the motion and 20 against it. As more than 10% of the members voted against the resolution, it was declared lost by the chairman.

The survey of vehicular movements within the estate was subsequently conducted by an independent body. The results of the four-day survey are summarized below:

Summary of vehicular movement into and out of Chancery Court

	Total Traffic	Shoppers' Cars	Through Traffic	Others*
10 November 1988 Thursday 8.45am to 2.45pm	774	266	473	35
11 November 1988 Friday 2.46am to 8.45pm	846	380	365	101
12 November 1988 Saturday 8.45am to 8.45pm	2011	914	949	148
13 November 1988 Sunday 8.45am to 8.45pm	1566	897	517	152
Total number of cars	5197	2457	2304	436

* This covers vehicles of residents and visitors of residents.

The results showed that the number of motorists using the roads in Chancery Court as a thoroughfare was almost the same as those who were shopping at the supermarket. It could therefore be said that the survey vindicated the need to regulate and limit the use of the roads within the estate, the maintenance of which is borne by the flat-owners.

Upon the termination of the said agreement on 31 March 1989, the management committee put the scheme into immediate effect. On 5 April 1989, the plaintiffs, through their solicitors, wrote to the first defendant to protest against the implementation of the scheme. Subsequent correspondence between the parties failed to resolve their differences. Hence this action and the interim injunction.

In an affidavit of their operations manager filed by the plaintiffs in support of the application for the interim injunction, it has been deposed that during the 11 days following the implementation of the scheme, the plaintiffs had suffered a revenue loss of $50,000 due to the loss of over 2,000 customers and that if the scheme continued, the plaintiffs would suffer irreparable loss in that (a) customer goodwill would be irrevocably lost as customers would shop at other supermarkets; (b) the plaintiffs would suffer such losses that they would have to close down the supermarket.

Those are the essential facts of this case. I do not think that the defendants deny that the plaintiffs' business had been adversely affected by the operation of the scheme. Nor do I think that it can be said, as was suggested by counsel for the plaintiffs, that the scheme was not bona fide for traffic control but for monetary gain. The plaintiffs' claim for relief is based on three causes of action. They complain that the implementation of the scheme was: (1) a derogation from the grant to them by the HDB; (2) a breach of the covenant in their tenancy agreement for quiet enjoyment; and (3) a nuisance. All these actions have a common thread running through them, and that is, some interest or right of the plaintiffs has been infringed by the action of the defendants. It is therefore necessary for the plaintiffs to show that they have some interest or right which has been or will be infringed.

The plaintiffs say that by reason of the letting to them of the premises for the purpose of operating the supermarket and for no other purpose, the plaintiffs are entitled to have unrestricted access for their customers in order to shop at the supermarket. It is contended that such right has to be implied as otherwise the plaintiffs will not be able to operate the supermarket successfully in a commercial sense. Accordingly, the first defendant as the assigns of the HDB (and by implication, the HDB) may not do anything on or in respect of any part of the common property which substantially interferes with this right.

Counsel referred to *Aldin* v *Latimer Clark, Muirhead & Co*[1] in support of his contention. In that case, the lessor had demised land to the lessee for the purpose of carrying on the business of a timber merchant and the lessee covenanted to carry on such business. The assigns of the lessor erected buildings on the adjoining property so as to interrupt the access of air to sheds upon the demised land used for drying timber, so as to interfere with the carrying on of the business in ordinary course. The lessee claimed an injunction to restrain such interference. Stirling J held that the lessee had such a right which was binding on the assigns but the injunction was refused on the ground that the damage was not sufficient to justify the granting of an injunction. For the court to give relief, the interference must be substantial (see p 447).

Aldin's case[1] is an application of the principle that a grantor may not derogate from his grant, which principle was stated by Stirling J (at p 447) as 'that the grantor of land to be used for a particular purpose is under an obligation to abstain from doing anything on the adjoining property belonging to him which would prevent the land granted from being used for the purpose for which the grant was made.' The principle is applicable even where there is no physical interference with the enjoyment of demised land. But, it is not any interference that will result in a derogation from the grant. The interference must be substantial. In *Harmer* v *Jumbil (Nigeria) Tin Areas Ltd*[2] Younger LJ said, at p 226:

> For the obligation laid upon the grantor is not unqualified. If it were, that which was imposed in the interest of fair dealing might, in unscrupulous hands, become a justification for oppression, or an instrument of extortion. The obligation therefore must in every case be construed fairly, even strictly, if not narrowly. It must be such as, in view of the surrounding circumstances, was within the reasonable contemplation of the parties at the time when the transaction was entered into, and was at that time within the grantor's power to fulfil. But so limited, the obligation imposed may, I think, be infinitely varied in kind, regard being had to the paramount purpose to serve which it is imposed. If, for instance, the purpose of a grant would in a particular case be frustrated by some act of the lessor on his own land which, while involving no physical interference with the enjoyment of the demised property, would yet be completely effective to stop or render unlawful its continued user for the purpose for which alone it was let, I can see no reason at all in principle why 'ut res magis valeat quam pereat' that act should not be prohibited, just as clearly as an act which, though less completely effective in its result, achieved it by some physical interference.

In *Harmer*'s case,[2] the Court of Appeal held that the principle applied to a case where the action of the lessor's assigns, if carried out, would result in the cancellation by the competent authority of the tenant's licence to use the demised premises which were let to him as an explosives magazine.

The crux of the issue is whether the operation of the scheme is a substantial interference with the rights of the plaintiffs. The answer will depend on the extent of the plaintiffs' rights. I do not think that the defendants deny that the plaintiffs have some rights arising from their status as tenants who carry on the business of a supermarket. Nor do they disagree with the principle that the lessor may not derogate from his grant. But the defendants deny that the plaintiffs' rights are so extensive as to prevent them from implementing the scheme in exercise of their statutory powers under the HUDC Act.

It is therefore necessary to determine first the nature of the right that is being claimed by the plaintiffs. Counsel says the plaintiffs have an unrestricted right to a free flow of customers to the supermarket. What does counsel mean by this proposition on the facts of this case? It should be recalled that the scheme calls for a levy of $1 on every non-resident motorist who wishes to enter the grounds of Chancery Court for whatever purpose they may have, which may be to visit a resident or to use the estate roads as a short cut or to shop at the supermarket. Taking into account the purpose of the demise, and applying the principle that the lessor must not derogate from his grant, a reasonable right which the law would imply in favour of a person in the position of the plaintiffs would be no more than that the first defendant as the assigns of the common property in Chancery Court must not do anything in respect of such property as would restrict the right of the plaintiffs' customers to shop at the supermarket.

But, under the scheme, the plaintiffs' customers are not barred or prevented or even physically hindered from shopping at the supermarket or using the roads in Chancery Court in order to do so. The scheme does not affect pedestrian shoppers or even non-resident motorists who are able to park their cars outside the boundaries of Chancery Court. These customers have free and unrestricted access. Furthermore, the scheme does not prevent non-resident motorists from shopping at the supermarket. What it does is not to prevent them from parking on the grounds of Chancery Court but to prevent them from parking free of charge. Therefore, the scheme affects only non-resident motorists who are not prepared to pay a levy of $1 to park their cars in the grounds of Chancery Court. According to the affidavit filed by the plaintiffs, it would appear that there are a substantial number of such people amongst the customers of the plaintiffs and therefore the scheme would have the effect of deterring such persons from shopping at the supermarket. What is in issue here is not whether or not the reaction of these customers to the scheme is reasonable. I have no doubt that the scheme is reasonable and that the levy is reasonable. The issue is whether the plaintiffs by virtue of having nothing more than the status of a tenant operating a supermarket are entitled to claim for their existing and prospective customers an absolute right to drive their cars and park them on the roads or the parking lots in Chancery Court free of charge. That, in essence, is the claim of the plaintiffs.

In my view, the claim to this right is not sustainable. It is much too extensive a right to be implied by law in favour of the plaintiffs for the purpose of operating their supermarket as it is neither necessary nor reasonable for such a business even in Singapore. If the court were to imply such a right, it would in effect be re-writing the terms of the tenancy agreement in favour of the plaintiffs. Although the HDB have not been represented and have made no submissions to the court, I think they would be most surprised if they were told that their tenancy agreement with the plaintiffs implied that they had an obligation to allow the plaintiffs' customers (which incidentally is a fluctuating and amorphous group of people) to park their cars free of charge in the estate. If such right were implied, it would be a short step to implying that the HDB

or the first defendant have an obligation to make up the roads and the parking lots in a condition that would not deter customers from parking in Chancery Court.

The conclusion I have reached is consistent with principle and analogous authority. In *O'Cedar Ltd* v *Slough Trading Co Ltd*,[3] the owners let out a building to the defendants who were manufacturers of mops and polishes. The lessees covenanted to pay as additional rent such sums as the lessors might expend to insure the demised premises. The lessors covenanted to keep the demised premises insured against fire and that the lessees should have quiet enjoyment of them. Subsequently, the lessors let premises adjacent to the demised premises to another lessee whose trade as a woodworker rendered it impossible for the insurance of the demised premises to be effected except at a considerably increased higher premium. The lessees claimed a declaration that the lessors were not entitled to let out the adjacent premises for the aforesaid purpose and also an injunction. The lessees relied on the principle that the lessors could not derogate from their grant.

Branson J rejected the claim after considering the law as stated in *Aldin*'s case[1] and *Harmer*'s case.[2] The reasons given by his Lordship are applicable to the facts of the case before me. The relevant part of the judgment begins at p 129 of the report:

> The contention is that the defendants, by doing something on the adjoining land which is not in itself unreasonable or unbusinesslike, which has not affected the demised premises physically in any way, which has not rendered it less easy or less legal to carry on upon them the business for which they were demised, but which has had the effect of adding substantially to the expense of carrying on that business there, have derogated from their grant. I should be extending the application of the principle into a region quite different from that in which it has hitherto been applied if I were to hold that it applied to anything done by a lessor upon adjoining land which, while not otherwise affecting the demised premises or their user in any way, merely made it more expensive than it was before for the lessee to carry on his business on the demised premises. I do not think such a case comes within that principle at all. It might as well be said that if the defendants had started paying higher wages in the adjoining factories on their land and thereby raised the price of labour in the neighbourhood the plaintiffs would have had an action for damages upon this principle. And many other instances might be cited, for it is difficult to place any limit upon the application of the principle if it extends to such a case as the present. Mr Grant relies upon the inclusion in the lease of the covenant by the plaintiffs not to do anything on the demised premises which might make it more expensive to insure the adjoining premises as indicating that a similar covenant on the part of the defendants should be implied as having been within the contemplation of the parties. To my mind it leads rather to the opposite conclusion. The fact that something done on one set of premises might affect the rate of insurance payable upon adjoining ones was obviously present in the minds of both the parties, and a covenant by one party in relation thereto was inserted and none by the other. I cannot think that it was within the reasonable contemplation of the parties that the defendants were putting themselves under such an obligation to the plaintiffs as that contended for in this case.

The relevance of *O'Cedar*'s case[3] is this: in the present case, the customers of the plaintiffs' supermarket had become used to parking their cars in the estate free of charge. They obviously would wish to be able to continue to do so in this way. But this has been and can only be done at the expense of the first defendant who has to maintain and repair the roads and the parking lots. I was informed by counsel that the plaintiffs had instituted a scheme to give a rebate of $1 to each non-resident motorist shopper who made purchases at the supermarket above a certain value. As the $1 levy would appear to have been the cause of the drop in business experienced by the plaintiffs during the period the scheme was in operation in April 1989, there would be no commercial reason why the plaintiffs should not maintain or continue with this scheme of giving a rebate of $1 to each customer, with or without any condition as to the value of purchases. Looked at from this perspective, all that the scheme would do would be to make it more expensive or less profitable for the plaintiffs to operate the supermarket. But, as was decided in *O'Cedar*'s case,[3] that does not amount to a derogation of a grant.

For the above reasons, I am of the view that the plaintiffs do not have the right they claim and therefore the causes of action as pleaded must fail. The defendants' action in implementing the scheme was not a private nuisance nor an interference with the plaintiffs' trade nor did it cause the HDB to breach its tenancy agreement with the plaintiffs.

The plaintiffs have also pleaded that the first defendant had acted ultra vires its powers under the HUDC Act and that the second to thirteenth defendants had acted without authority in implementing the scheme in April 1989. In view of my finding that no right or interest of the plaintiffs has been infringed by the operation of the scheme, these are academic issues, as the court will not grant relief to any party who has no rights to enforce. However, I will deal with these two issues because they are important to all management corporations established under the HUDC Act. In my view, the argument that the first defendant's action was ultra vires the HUDC Act has no merit. The first defendant not only has the power to manage the estate, it is under a duty to do so. The regulation of the use of the roads and the car parks in the estate comes within the first defendant's power of management and would plainly be for the benefit of the residents therein. Moreover, the adoption of the scheme was effected at a general meeting of the lessees of the flats in Chancery Court who were the owners as tenants in common of the roads in the estate. Therefore, even if they did not have the statutory power, they had the power to implement the scheme, having been authorized by the owners to do so. The argument relating to the lack of authority on the part of the management committee in implementing the scheme in

April 1989 is also without merit. The argument is based on the defeat of the 'special resolution' which moved that the scheme be implemented immediately. It is argued that the effect of that defeat was that the members had decided not to implement the scheme and therefore the defendants acted unlawfully in implementing the scheme. Counsel for the first defendant has submitted that the special resolution could not have been tabled as a special resolution (as ruled by the chairman of the meeting) as fourteen days' prior notice thereof had not been given to the members contrary to the requirements of a special resolution as defined in s 2 of the HUDC Act, and that the resolution would have been validly passed as an ordinary resolution on the basis of the voting. Accordingly, he submits that either the 'special resolution' took effect as an ordinary resolution or that it did not take effect at all, in which either event, the resolution passed at the EGM on 19 April 1987 called for the implementation of the scheme and therefore the first defendant acted properly in implementing it on 1 April 1989. I agree with this submission. As a special resolution, it was null and void. As an ordinary resolution, it was validly passed.

Counsel for the plaintiffs further submitted that even if insufficient notice had been given for the special resolution to be tabled, it was validly passed. In support of his contention, he referred to a passage in Horsley's *Meetings: Procedure, Law and Practice* (2nd Ed) which reads:

> Where resolutions passed at a meeting convened by a notice which was invalid have been acted on without objection and adopted by acquiescence over a long period, such resolutions have been held to be valid and effective.

In my view, the facts of this case do not come within the principle stated in the passage. Here, the first defendant ignored the voting on the special resolution and implemented the scheme the moment the agreement with the plaintiffs ceased to take effect.

The interim injunction is set aside and the action is dismissed with costs. There will be an inquiry as to the damages suffered by the first defendant arising out of the interim injunction and an order that the same be paid by the plaintiffs to the first defendant.

Application dismissed.

Solicitors: *Drew & Napier; Choo & Joethy; Terry Ang & Partners; Toh, Tan & Partners.*

Reported by *Terence Tan Bian Chye*

Goh Siam Yong v Zacharia Norman Augustine & Anor

HIGH COURT (SINGAPORE) - ORIGINATING SUMMONS NO 331 OF 1989
CHAN SEK KEONG J
27 JULY 1989

Civil Procedure - Appeal - Damages assessed by deputy registrar in chambers - Appeal to judge in chambers - Whether right of appeal to High Court exists from decision of judge in chambers - Whether right of appeal restricted under Subordinate Courts Rules 1986, O 55 r 1(5) - Whether such rule ultra vires enabling Act - Subordinate Courts Rules 1986, O 55 r 1 - Subordinate Courts Act (Cap 321, 1985 Ed), s 47 - Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 21

The plaintiff claimed damages for personal injuries suffered in a traffic accident caused by the negligence of the first defendant. Upon interlocutory judgment being entered, damages were assessed by the deputy registrar in chambers at $4,780.89. The defendants appealed against this decision to the district judge in chambers who reduced the damages to $1,177.50. The plaintiff sought to appeal to the High Court and took out an application for a declaratory order that she has a right of appeal.

Held, allowing the plaintiff's application:

(1) Section 47 of the Subordinate Courts Act(Cap 321, 1985 Ed) cannot justify the validity of O 55 r 1(5) of the Subordinate Courts Rules 1986. It does not authorize the making of rules of court which deny the right of appeal to the High Court. The statutory provision conferring the right of appeal to the High Court is actually found in s 21 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed). Accordingly, O 55 r 1(5) is ultra vires the Subordinate Courts Act.

(2) The Subordinate Courts Rules 1986 is subsidiary legislation made under the Subordinate Courts Act and is thus subject to challenge on the ground of being ultra vires the enabling Act. There being no relevant provision in the Subordinate Courts Act which empowers the general right of appeal to the High Court as conferred by s 21 of the Supreme Court of Judicature Act, any rule of court made under the Subordinate Courts Act which purports to restrict such right must be ultra vires.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 83 of 1989.]

Legislation referred to
Interpretation Act (Cap 1, 1985 Ed) s 2
Subordinate Courts Act (Cap 321, 1985 Ed) s 47
Subordinate Courts Rules O 55 r 1(5)
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 21

NS Kang for the plaintiff.
Axel Chan for the defendants.

Cur Adv Vult

Chan Sek Keong J: The application before me raises an important point on the right of appeal to the High Court from a decision of a judge in chambers on appeal from a judgment, order or decision of the registrar.

The applicant is the plaintiff in MC Suit No 54 of 1988. She claimed against the defendants damages for